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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,379	09/25/2003	Thomas K. McDonald	BEAER:65632	1868
24201	7590	01/12/2005	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE TENTH FLOOR LOS ANGELES, CA 90045			RAGONESE, ANDREA M	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/671,379

**Applicant(s)**

MCDONALD ET AL.

**Examiner**

Andrea M. Ragonese

**Art Unit**

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on October 22, 2004 has been entered. Examiner acknowledges that **claim 22** has been amended.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on October 22, 2004 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US 6,672,307 B2 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Response to Arguments***

3. Applicant's arguments, see pages 6-8, filed October 22, 2004 have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new grounds of rejection have been made hereinafter.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3743

5. **Claims 22-29 and 31-34** are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shoemaker et al. (US 4,595,003). Regarding **claims 22, 23, 26-29, 31, 32 and 34**, Shoemaker et al. discloses a quick-donning full face oxygen mask **10** including a flexible mask assembly **12** having a flexible periphery **16** conformable to a wearer's face and a flexible optical lens **18** of optical quality disposed in the flexible mask assembly **12**, which allows a wide field of view to the wearer as shown in Figure 1. The mask **10**, and its components, are "molded of a transparent silicone elastomer" such as "silicone elastomer X4-2665, made by Dow Corning" (column 4, lines 25-42). Regarding **claims 24, 25 and 33**, the flexible optical lens **18** is "coated on both sides with urethane from a solvent bath to improve the abrasion resistance of the mask" (column 4, line 67 through column 5, line 16).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claim 30** is rejected under 35 U.S.C. 103(a) as being unpatentable over Shoemaker et al. (US 4,595,003), as applied to **claims 22-29 and 31-34** above, in view of Aulgur et al. (US 4,915,106) or Dubruille et al. (US 5,630,412). Shoemaker et al. discloses a quick-donning full face oxygen mask **10** comprising all the limitations recited in **claim 30**, with the exception of an inflatable harness formed of silicone tubing. However, the use of an inflatable harness formed of silicone tubing was known at the

Art Unit: 3743

time the invention was made. Specifically, Aulgur et al. or Dubruille et al. teaches the use of "a harness strap which can be inflated to a somewhat rigid, self-sustaining orientation to permit one-handed placement of the respirator over the wearer's head" ('106, Abstract) or a "harness...capable of pressing the mask against the face with sufficient force to prevent leaks" ('412, column 1, lines 22-38). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the mask of Shoemaker et al. by adding an inflatable harness formed of silicone tubing because it is well known in the art, as taught by Aulgur et al. or Dubruille et al., to utilize an inflatable harness in order to secure a breathing apparatus snugly, yet comfortably, to the wearer's head.

### ***Conclusion***

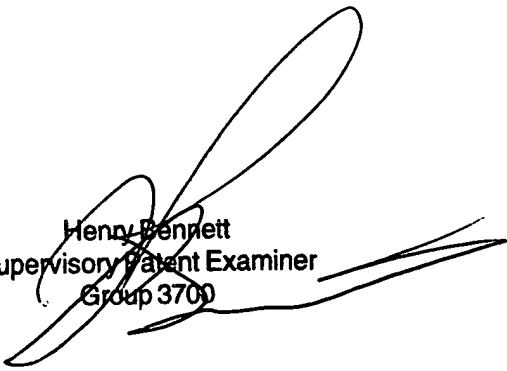
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese** whose telephone number is **571-272-4804**. The examiner can normally be reached on Monday through Friday from 8:30 am until 5:00 pm.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3743

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR   
January 3, 2005

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700